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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN MICHAEL BLACK,

Defendant and Appellant.

F042592

(Super. Ct. No. 79557)

**MODIFICATION ON
DENIAL OF REHEARING
[NO CHANGE IN JUDGMENT]**

The opinion filed in the above entitled action on June 1, 2004, is modified as follows:

1. On page 8, in the second line of footnote 6, the wording “or any other victims” is inserted after “J.W.” so that, as modified, the footnote reads:

“Having concluded that disclosure and introduction of the evidence of Babysitter’s molestation of J.W., or any other victims, would not have affected the outcome, we need not address appellant’s contention that his defense representation (including the defense investigation) was deficient for failing to disclose such evidence. (*People v. Frye* (1998) 18 Cal.4th 894, 979 [to succeed on a claim of ineffective assistance of counsel, appellant must show he was prejudiced by counsel’s deficient representation].)”

2. There is no change in judgment.

Appellant's petition for rehearing is denied.

Dibiaso, Acting P.J.

WE CONCUR:

Vartabedian, J.

Dawson, J.